



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MGE/168428

PRELIMINARY RECITALS

Pursuant to a petition filed September 03, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Winnebago County Department of Human Services in regard to Medical Assistance, a hearing was held on October 13, 2015, at Oshkosh, Wisconsin.

The issue for determination is whether the agency properly determined the Petitioner's patient liability and the spousal allocation.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Jeanie Ortiz

Winnebago County Department of Human Services
220 Washington Ave.
PO Box 2187
Oshkosh, WI 54903-2187

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Winnebago County. She resides in a skilled nursing facility. Her spouse [REDACTED] resides in the community.

2. On or about July 22, 2014, the Petitioner submitted an application for Institutional MA. On August 25, 2014, the agency issued a Notice of Decision to the Petitioner informing her that her application was approved for Institutional MA effective October 1, 2014 with a monthly patient liability of \$1,623.52. The agency based the patient liability on monthly unearned income of the Petitioner of \$3,275.95 which included income from a [REDACTED] pension of \$2,826.08/month and \$449.87/month from an additional retirement fund. The agency incorrectly used the Petitioner's net income of \$2,826.08/month instead of using the gross income from the [REDACTED] pension in determining her eligibility and patient liability. The agency also budgeted health insurance costs of \$414/month for the Petitioner. The community spouse allocation was \$1,192.83/month.
3. In or about March, 2015, the Petitioner completed a renewal. On March 5, 2015, the agency issued a Notice of Decision to the Petitioner informing her that her renewal was complete and her Institutional MA benefits would continue effective April 1, 2015 with a monthly patient liability of \$1,657.52. This was based on pension/retirement income of the Petitioner in the amount of \$3,275.95/month and health insurance costs of \$414/month. The community spouse allocation was \$1,158.83/month.
4. In July, 2015, the Petitioner submitted her annual renewal. The agency updated her case to reflect gross income from the Petitioner's [REDACTED] pension of \$3,632.80/month. On July 13, 2015, the agency issued a Notice of Decision to the Petitioner informing her that effective August 1, 2015, her monthly patient liability would increase to \$2,463.21. This was based on the Petitioner's monthly pension/retirement income of \$4,082.67 ([REDACTED] pension of \$3,633/month gross and additional pension/retirement income of \$449.67/month) and health insurance costs of \$392.30/month. The community spouse allocation is \$1,182.16/month.
5. The Petitioner's husband has Social Security Retirement income of \$1670/month.
6. [REDACTED]'s monthly expenses are detailed below:

Mortgage	\$ 500.00
Property taxes	\$ 450.00
Home & Auto insurance	\$ 175.16
Electric bill	\$ 137.00
Gas bill	\$ 206.00
Water & sewer	\$ 73.00
Phone - Petitioner	\$ 37.00
Condo Fees	\$ 163.00
Medications	\$ 200.00
Health insurance	\$ 600.00
Credit Card	\$1,000.00 (Balance of \$2,200 in July, 2015)
AT & T (cable, phone, internet)	\$ 246.00
Groceries	\$ 200.00
Miscellaneous household	\$ 200.00
Entertainment	\$ 40.00
Attorney fees	\$ 50.00
Gas	\$ 60.00

Miscellaneous personal \$ 150.00

Home health services \$ 800.00

In addition to the ongoing home health services for ■■■ he has an outstanding balance with the home health agency of \$13,000.

Total monthly expenses noted above for ■■■ are \$6,287.16, including \$1000/month to pay off the home health agency bill of \$13,000.

7. On September 3, 2015, an appeal was filed on behalf of the Petitioner with the Division of Hearings and Appeals.

DISCUSSION

Wis. Stat. § 49.455 is the Wisconsin codification of 42 U.S.C. §13964-5 (MCCA). Among other things, the "spousal impoverishment" provisions at Wis. Stat. § 49.455 direct the Department to establish an income allowance for the community spouse of an institutionalized person. That allowance set by the agency is \$2,852.16 per month, as directed by MA policy. See, Medicaid Eligibility Handbook, Appendix 18.6.2. The institutionalized person may divert some of her income to the community spouse rather than contributing to her own cost of care. The amount of the diverted income, when combined with the spouse's income, cannot exceed the maximum allowance determined by the agency. Any income of the institutionalized spouse that is not allocated to the community spouse or the personal needs allowance must be paid to the nursing home as the institutionalized person's cost of care share.

An administrative law judge (ALJ) can grant an exception to this limit on income diversion. The ALJ may increase the income allowance following a fair hearing. The ALJ does not have unfettered discretion in creating an exception to the maximum allocation ceiling, however. The relevant statutory provision states that the test for exception is as follows:

(c) If either spouse establishes at a fair hearing that, due to exceptional circumstances resulting in financial duress, the community spouse needs income above the level provided by the minimum monthly maintenance needs allowance determined under sub. (4)(c), the department shall determine an amount adequate to provide for the community spouse's needs and use that amount in place of the minimum monthly maintenance needs allowance in determining the community spouse monthly income allowance under sub. (4)(b).

Wis. Stat. § 49.455(8)(c). Thus an ALJ may augment the maximum allocation ceiling only by amounts needed to alleviate financial duress, to allow the community spouse to meet necessary and basic maintenance needs. The MA Eligibility Handbook states that a court or fair hearing can increase the community spouse income allocation if it determines the spouse is not able to provide for his/her necessary and basic maintenance needs with the amount allocated. MA Handbook, § 18.6.2.

Based on this criteria I have reviewed the expenses noted at Finding # 6 and have the following adjustments to make:

- With regard to the credit card bill, the Petitioner's husband testified at the hearing that he would make \$1000/month payments to pay off the balance of \$2,200. Based on this testimony, I will make the assumption that this balance has now been paid off and will not make an allowance for this expense.
- With regard to the Petitioner's home health bill, I will allow \$800/month for ongoing care and \$1,000/month to allow the Petitioner to pay off the bill. When the outstanding balance is paid off in 13 – 14 months, this allowance should be revised.

- With regard to the Petitioner's AT & T bill, in accordance with previous DHA decisions, cable TV is not considered a basic and necessary expense. I will, however, allow the phone expense. In addition, I find that internet expense is necessary because of internet banking and bill pay that occur. I was unable to establish how much of the Petitioner's \$246/month bill relates to each bundled item. I will allow \$175/month for the phone and internet expense.
- Entertainment is not a basic and necessary expense.

Based on allowable monthly expenses for ■■■ of \$5,146.16, I conclude that the agency should allocate \$3,476.16 of Petitioner's income to ■■■ from the Petitioner's income for a 14 month period. Thereafter, the allocation should be reduced to \$2,476.16 because the Petitioner's home health agency bill should be paid off. The Petitioner's patient liability should be reduced to \$606.51 for the 14 month period. Thereafter, the Petitioner's patient liability will be \$1,606.51. If ■■■'s circumstances change at any time, he can request further review of the spousal allocation.

CONCLUSIONS OF LAW

That Petitioner has demonstrated that a community spouse income allocation in the amount of \$3,476.16 is warranted for a 14 month period subsequent to this decision and an allocation in the amount of \$2,476.16 is warranted thereafter. The Petitioner's patient liability should be reduced to \$606.51 for the 14 month period subsequent to this decision and thereafter, the patient liability should be adjusted to \$1,606.51. The allocation and patient liability may be adjusted based on subsequent reviews in accordance with the law.

THEREFORE, it is

ORDERED

That the matter be remanded to the agency with instructions to add a spousal allocation of \$3,476.16 per month for a 14 month period of subsequent to this decision and an allocation of \$2,476.16 per month thereafter. The Petitioner's patient liability should be adjusted to \$606.51 for the 14 month period subsequent to this decision and thereafter the patient liability should be adjusted to \$1,606.51. The agency must take these steps within 10 days of the date of this Order.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

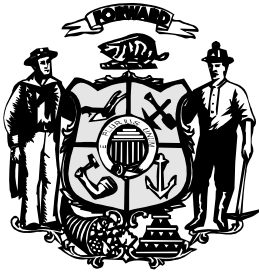
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in

this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 25th day of November, 2015

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on November 25, 2015.

Winnebago County Department of Human Services
Division of Health Care Access and Accountability